

DANIEL K. INOUE, HAWAII
JOHN F. KERRY, MASSACHUSETTS
BYRON L. DORGAN, NORTH DAKOTA
BARBARA BOXER, CALIFORNIA
BILL NELSON, FLORIDA
MARIA CANTWELL, WASHINGTON
FRANK R. LAUTENBERG, NEW JERSEY
MARK PRYOR, ARKANSAS
CLAIRE McCASKILL, MISSOURI
AMY KLOBUCHAR, MINNESOTA
TOM UDALL, NEW MEXICO
MARK WARNER, VIRGINIA
MARK BEGICH, ALASKA

KAY BAILEY HUTCHISON, TEXAS
OLYMPIA J. SNOWE, MAINE
JOHN ENSIGN, NEVADA
JIM DEMINT, SOUTH CAROLINA
JOHN THUNE, SOUTH DAKOTA
ROGER F. WICKER, MISSISSIPPI
GEORGE S. LEHMAN, FLORIDA
JOHNNY ISAKSON, GEORGIA
DAVID VITTER, LOUISIANA
SAM BROWNBACK, KANSAS
MIKE JOHANNIS, NEBRASKA

ELLEN DONESKI, STAFF DIRECTOR
ANN BEGEMAN, ACTING REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

June 16, 2010

Randall L. Stephenson
Chairman, Chief Executive Officer
and President
AT&T Inc.
208 S. Akarad Street
Dallas, TX 75202

Dear Mr. Stephenson,

The Senate Committee on Commerce, Science, and Transportation is examining the practice of “cramming” unauthorized third party charges on to consumers’ telephone bills. I am concerned that while the telecommunications industry has been aware of this deceptive billing practice for more than a decade, cramming appears to be as prevalent as ever. I am therefore writing to request more information about how AT&T and its subsidiaries work with third party vendors, and how your company handles customer complaints about third party charges.

According to the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), state Attorneys General, the Better Business Bureau, court documents, news reports, and various other online sources, consumers regularly complain that their phone bills include charges for products and services they did not order.¹ Such charges are described on phone bills as being for a wide variety of products, including website hosting, email, voicemail, emergency road-services, and international or collect calls. When consumers call their phone companies to dispute such charges, they often learn that the charges have been placed on their phone bills by third party billing “aggregators,” acting on behalf of unfamiliar service “vendors.” Consumers complain they have not authorized these vendors to charge their phone bills and have never used the vendors’ purported services.

For more than a decade, federal and state law enforcement authorities have pursued cases against companies that have placed unauthorized charges on consumers’ phone bills. Yet when the authorities shut down one “cramming” scheme, others take its place. For example, in a case filed in 2006, the FTC alleged that a company called Nationwide Connections made more than \$30 million by burying charges on consumers’ phone bills for collect calls that never occurred.

¹ In first three quarters of 2009, for example, the FCC received 4,898 cramming “inquiries” from consumers. Federal Communications Commission, Consumer and Governmental Affairs Bureau, *Quarterly Inquiries and Complaints Reports* (online at <http://www.fcc.gov/cgb/quarter/welcome.html>) (accessed June 8, 2010).

According to the FTC, this particular scheme was masterminded by a con-artist who ran his business from the Palm Beach County jail and who personally received more than \$5 million from the scheme while in jail.²

More recently, the FTC sued a group of companies for allegedly cramming more than \$19 million dollars worth of unauthorized charges mostly on to the phone bills of small businesses for website hosting, Internet directory listings, search-engine advertising and Internet-based faxing. In that case, the Court ordered the defendants to send all of their current customers a verification letter asking them to confirm in writing that they authorized the services in question and wanted to continue being billed on their phone bills for the charges. The defendants sent 10,924 verification letters to current customers and only 27 sent a response indicating that they authorized and wanted the service.³

I am aware that in 1998, telecommunications industry representatives worked with the FCC to develop "Anti-Cramming Best Practices Guidelines."⁴ These voluntary guidelines reaffirmed that telephone companies (also known as local exchange carriers or "LECs") have a "responsibility to ensure that consumers are afforded basic billing rights for all billing on the local telephone bill."⁵ Unfortunately, the development of these guidelines has not stopped cramming. I am concerned that your industry's failure to adopt and effectively enforce these guidelines has left your customers' telephone bills accessible to little-known companies that engage in fraudulent billing practices. While I acknowledge the difficulties involved in monitoring vendors' conduct, I wholeheartedly agree with the following sentiment expressed by a federal judge in the recent *INC21* opinion:

LECs have a responsibility to learn the ultimate destination of the funds they are charging their own customers so that if and when fraud occurs, they can protect their customers and immediately put an end to the fraudulent billing.⁶

In order to help the Senate Commerce Committee better understand the practice of cramming and its continuing impact on consumers, please provide the following information and documents. In each of the requests below, "AT&T" refers to AT&T Inc., and its subsidiaries.

1. Identify every billing aggregator that has had an agreement with AT&T to place third party charges on AT&T's customers' phone bills at any time during the last five years. For each such billing aggregator provide the following information and documents:

² See Plaintiff's Complaint (Feb. 24, 2006), *FTC v. Nationwide Connections, Inc.*, S.D. Fla. (No. 06-80180).

³ *FTC v. INC21.Co*, No. C 10-00022 WHA (N.D. Cal. Feb. 19, 2010) (Memorandum Opinion and Order in Support of Preliminary Injunction).

⁴ Federal Communications Commission, *Anti-Cramming Best Practices Guidelines* (1998) (online at http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.pdf).

⁵ *Id.*

⁶ *FTC v. INC21.Co*, *supra* note 3, at 17.

- a. All d/b/a's, addresses and telephone numbers of the billing aggregator;
 - b. The name and contact information of all employees or agents of the billing aggregator who have served as points of contact for AT&T;
 - c. All names under which the billing aggregator's charges appear on AT&T's customers' phone bills;
 - d. The date on which the relationship between AT&T and the billing aggregator began and, if applicable, the date the relationship ended, and all contracts or agreements and all amendments to the contracts or agreements between AT&T and the billing aggregator;
 - e. For each of the last five years, the number and dollar value of the charges the billing aggregator submitted to AT&T to be placed on AT&T's customers' bills, the number and dollar value of those charges AT&T placed on its customers' bills, and an explanation if these figures are different;
 - f. For each of the last five years, the number and dollar value of refunds, charge backs, write offs and receipts broken down by whatever categories AT&T uses to categorize such adjustments, and provide an explanation for what the categories mean;
 - g. For each of the last five years, the total dollar amount AT&T paid or remitted to each billing aggregator and AT&T's net proceeds for providing billing and other services to the billing aggregator;
 - h. The amount of any funds that AT&T keeps in escrow or reserve (formally or informally) relating to the billing aggregator; and
 - i. For each of the last five years, the number of customer complaints, inquiries, or contacts AT&T received relating to the billing aggregator.
2. With respect to each billing aggregator identified in response to request #1, identify each vendor for which the billing aggregator has arranged to have third party charges placed on AT&T's customers' phone bills at any point during the last five years. For each such vendor, provide the following information and documents:
 - a. All d/b/a's, addresses, telephone numbers, and sub-Carrier Identification Codes ("sub-CIC") of the vendor;
 - b. The billing descriptors for the vendor and for each of the vendor's products or services, as they appeared on AT&T's customers' bills;
 - c. The name and contact information for the officers, directors, or other principals of the vendor;
 - d. A description of the products or services the vendor was providing to AT&T's customers;
 - e. Any evidence the vendor provided AT&T showing that AT&T's customers authorized AT&T to place the vendor's third party charges on their phone bills;
 - f. For each month of the last five years, the number and dollar value of the charges the vendor or its billing aggregator submitted to AT&T to be placed on AT&T's customers' bills, the number and dollar value of those charges AT&T placed on its customers' bills, and an explanation if these figures are different;

- g. For each month of the last five years, the number and dollar value of refunds, charge backs, write offs and receipts broken down by whatever categories AT&T uses to categorize such adjustments, and provide an explanation for what the categories mean;
 - h. For each month of the last five years, the total dollar amount AT&T paid or remitted to the vendor or its billing aggregator and AT&T's net proceeds for providing billing and other services relating to the vendor;
 - i. The amount of any funds that AT&T keeps in escrow or reserve (formally or informally) relating to the vendor;
 - j. All documents AT&T received from the vendor or its billing aggregator describing the vendor and any products or services sold by the vendor, including any sub-CIC information form or other application provided by the vendor or aggregator to AT&T;
 - k. All documents and communications relating to refunds, charge backs, or write offs AT&T initiated for the vendor's third party charges;
 - l. All documents and communications relating to AT&T's suspension, termination, or modification, or the possible suspension, termination, or modification of billing on behalf of the vendor; and
 - m. For each of the last five years, the number of customer complaints, inquiries or contacts received by AT&T relating to the vendor.
3. All documents and communications relating to customer complaints, inquiries, or contacts about third party charges on AT&T's customers' phone bills, including, but not limited to, all communications on this subject from the Better Business Bureau, state Attorneys General, state utility commissions or public service commissions, state utility consumer advocates, the Federal Trade Commission, or the Federal Communications Commission.
4. All documents and communications relating to AT&T's customers accidentally or unknowingly being signed up for third party charges, including, but not limited to, documents and communications reflecting discussions about the problem between AT&T employees and efforts to minimize the problem.
5. All documents and communications relating to unauthorized third party charges on AT&T's customers' phone bills.
6. All documents relating to scripts, policies, manuals, or procedures that have been provided to any AT&T employee to prepare for or use during communications with AT&T's customers about third party charges on the customers' phone bills, including, but not limited to, scripts, policies, manuals, or procedures for handling customer complaints about third party charges.
7. All documents and communications relating to law enforcement investigations, actions, allegations of fraud or other misconduct against a billing aggregator or vendor on whose behalf AT&T billed its customers.

8. Identify which of the 1998 Anti-Cramming Best Practices Guidelines AT&T has adopted and describe the manner in which AT&T implemented those best practices. The responses should specifically address:
 - a. Any procedures AT&T has in place to screen third party vendors and the products and services they offer, including any criteria AT&T has established to help AT&T identify problematic programs, including but not limited to those identified in the Best Practices Guidelines as problematic (those offered via “box” or sweepstakes contest/entry forms, and those initiated using negative option plans), and any program AT&T has in place for reviewing vendors’ promotional and marketing materials;
 - b. Complaint, adjustment, or consumer query thresholds that AT&T uses to identify problematic practices and the procedures AT&T has in place for dealing with vendors or billing aggregators who exceed those thresholds;
 - c. Any processes AT&T has in place to ensure that it is not placing unauthorized third party charges on its customers’ phone bills, including any requirement that the vendors for which it bills obtain customers’ authorization and any monitoring program AT&T has in place to verify vendor compliance; and
 - d. Any end user customer dispute resolution process that AT&T has implemented to deal with customer complaints about cramming.
9. To the extent not already provided, for the defendant vendors in the following cases—*FTC v. Inc21.com*, *FTC v. Nationwide Connections*, *State of Nevada v. Payment People, Inc.*, *People of the State of Illinois v. Minilec ISP Warranty, LLC*, and *People of the State of Illinois v. US Credit Find, Inc.*⁷—provide the following information and documents:
 - a. For each month AT&T billed on behalf of the vendors, provide the number and dollar value of the charges the vendor sent to AT&T to be placed on AT&T’s customers’ bills, the number and dollar value of those charges AT&T placed on its customers’ bills, and an explanation if these figures are different;
 - b. For each month AT&T billed on behalf of the vendors, provide the number and dollar value of refunds, charge backs, write offs and receipts broken down by whatever categories AT&T uses to categorize such adjustments, and provide an explanation for what the categories mean; and
 - c. All documents and communications related to each vendor, including, but not limited to, all documents and communications related to complaints or inquiries about unwanted or unauthorized third party charges from these vendors.

⁷ *FTC v. Nationwide Connections, Inc.*, S.D. Fla. (No. 06-80180); *FTC v. INC21.Com.*, N.D. Cal. (No. C 10-00022 WHA); *People v. Minilec ISP Warranty, LLC*, Ill. 7th Cir. (No. 2009-CH-378); *People v. U.S. Credit Find, Inc.*, Ill. 7th Cir. (No. 2009-CH-21); *State of Nevada v. The Payment People, Inc.*, Nev. 1st Dist. (No. 09-0C-00431 1B).

Letter to Mr. Stephenson

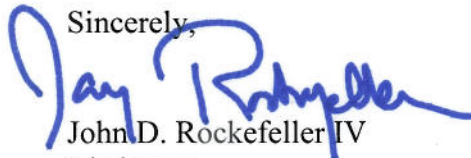
June 16, 2010

Page 6 of 6

10. Explain why AT&T places third party charges on its customers' phone bills.

Please provide the requested information and documents by Friday, July 16, 2010.

The Committee is conducting this investigation under the authority of Senate Rules XXV and XXVI. An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions, please contact Erik Jones or John Williams with the Committee staff at (202) 224-1300.

Sincerely,

John D. Rockefeller IV
Chairman

Enclosure

cc: Kay Bailey Hutchison
Ranking Member